

48A C.J.S. Judges § 316

Corpus Juris Secundum | August 2023 Update

Judges

Joseph Bassano, J.D.; Khara Singer-Mack, J.D.; Thomas Muskus, J.D; Karl Oakes, J.D. and Jeffrey J. Shampo, J.D.

IX. Disqualification to Act

D. Objections to Judge and Proceedings Thereon

2. Mode and Sufficiency of Raising Objection

a. General Considerations

§ 316. Certificate of good faith

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Judges](#)  51(3)

A certificate of good faith properly executed must be filed as required by statute.

Where the statute so requires, the affidavit of bias or prejudice must be accompanied by a certificate of counsel of record that it is made in good faith.¹ The counsel of record in such a case means an attorney at law admitted to the bar of the court who has been the counsel of record in the case,² and a layperson is not entitled to file such certificate.³ The good faith certified to is that of the attorney and not that of the party making the affidavit,⁴ but by certifying that a motion to disqualify is made in good faith, the attorney necessarily certifies that the client's affidavit was made in good faith.⁵ The requirement is founded on the assumption that a member of the bar will not indulge in reckless disregard of truth.⁶

The attorney should not affix his or her name to the certificate without considerable deliberation and investigation as to whether the allegations in the affidavit are true.⁷ Counsel should do more than accept the word of his or her client as to the truth of the allegations.⁸ The certificate must disclose the authority of the attorney making it to do so,⁹ and an attorney signing the affidavit as a party may not execute the certificate as counsel of record in the absence of evidence of authority to act.¹⁰

Construction.

The certificate is subject to strict construction¹¹ and will be regarded as defective where it in fact fails to certify the good faith of the counsel of record¹² or where it is clear from the content of the motion that the motion is not being made in good faith.¹³

CUMULATIVE SUPPLEMENT

Cases:

Failure by defendant's counsel to comply with procedural requirement of filing certificate of good faith warranted denial of defendant's motion for recusal on ground of personal bias or prejudice, in sentencing hearing for making false statements to a financial institution. 28 U.S.C.A. § 144. *United States v. Barr*, 960 F.3d 906 (7th Cir. 2020).

[END OF SUPPLEMENT]

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Footnotes

1 U.S.—*Sataki v. Broadcasting Bd. of Governors*, 733 F. Supp. 2d 54 (D.D.C. 2010); *U.S. v. Sevilla-Oyola*, 854 F. Supp. 2d 164 (D.P.R. 2012).

Fla.—*Santisteban v. State*, 72 So. 3d 187 (Fla. 4th DCA 2011).

Indispensable part of affidavit

U.S.—*Duplan Corp. v. Deering Milliken, Inc.*, 400 F. Supp. 497 (D.S.C. 1975).

2 U.S.—*U.S. v. Hoffa*, 382 F.2d 856 (6th Cir. 1967); *Duplan Corp. v. Deering Milliken, Inc.*, 400 F. Supp. 497 (D.S.C. 1975).

Counsel admitted pro hac vice and not member of bar

U.S.—*U.S. v. Bravo Fernandez*, 792 F. Supp. 2d 178 (D.P.R. 2011).

3 U.S.—*U.S. v. Onan*, 190 F.2d 1 (8th Cir. 1951).

4 U.S.—*U.S. v. Civella*, 416 F. Supp. 676 (W.D. Mo. 1975).

Party acting pro se as required to file certificate of counsel

U.S.—*Robinson v. Gregory*, 929 F. Supp. 334 (S.D. Ind. 1996).

Party acting pro se as not required to file certificate of counsel

Ind.—*Adams v. State*, 268 Ind. 434, 376 N.E.2d 482 (1978).

5 Fla.—*Livingston v. State*, 858 So. 2d 353 (Fla. 1st DCA 2003).

6 U.S.—*Morrison v. U.S.*, 432 F.2d 1227 (5th Cir. 1970); *U. S. v. Hoffa*, 245 F. Supp. 772 (E.D. Tenn. 1965).

Guard against groundless claims

U.S.—*U.S. v. Haldeman*, 559 F.2d 31, 1 Fed. R. Evid. Serv. 1203 (D.C. Cir. 1976).

7 U.S.—*U. S. v. Hanrahan*, 248 F. Supp. 471 (D. D.C. 1965).

8 U.S.—*U.S. v. 16,000 Acres of Land, More or Less, in LaBette County, Kan.*, 49 F. Supp. 645 (D. Kan. 1942).

9 U.S.—*U.S. v. 16,000 Acres of Land, More or Less, in LaBette County, Kan.*, 49 F. Supp. 645 (D. Kan. 1942).

- 10 U.S.—U.S. v. 16,000 Acres of Land, More or Less, in LaBette County, Kan., 49 F. Supp. 645 (D. Kan. 1942).
- 11 U.S.—U. S. v. Gilboy, 162 F. Supp. 384 (M.D. Pa. 1958).
- 12 **Indication of reluctance to file**
U.S.—U. S. v. Hanrahan, 248 F. Supp. 471 (D. D.C. 1965).
- 13 **Inaccurate representation of judge's statements**
Fla.—Gregory v. State, 118 So. 3d 770 (Fla. 2013).

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